

# *Assembly of Congress*

## **A. MEETING AND ORGANIZATION**

### **§ 1. In General; Law Governing**

An understanding of the body of procedure through which the United States House of Representatives fulfills its functions and exercises its prerogatives must be based, in the beginning, on a comprehension of how the Congress comes together, and of the methods through which it arrives at an organizational structure and at a body of rules to govern its proceedings.

This chapter is principally confined to the specific steps and principles of procedure which apply to the initial organization of the House of Representatives. The discussion is chronological, following the progression which the House itself follows at organization. Although this chapter focuses on circumstances indigenous to the organization of a new Congress, parallels are drawn to the mode of operation at the start of new sessions during a term of Congress as well.

This chapter discusses the general law which governs the House

as soon as it has come together, but before organization has been consummated, the provisions of law directing the assembly of Congress, and the steps of organization which occur at the convening of Congress. The four types of "assembly," and their relationship to the sessions of Congress, are described, as are the time and place at which Congress meets both at assembly and during sessions.

The first division of this chapter sets forth, schematically, the various organizational steps, including the election of the Speaker, and describes the proceedings over which he presides in completing organization. The functions and authority of the Speaker and of the other officers of the House at the opening of Congress are detailed.

The second division deals with the principles of organizational proceedings, before and after standing rules have been adopted. The use of motions, miscellaneous floor procedure, and the consideration and passage of bills and resolutions during the organizational period are covered, as well as the

procedure and substantive law relating to the adoption of the rules themselves. How the House resumes business, and what business is resumed, is likewise included.

A word first is in order about the general body of procedural law which governs the House during the period of organization. It is a general principle that in the absence of the adoption of rules of procedure and in the absence of statutory regulation, a public deliberative body is governed by the generally accepted rules of parliamentary procedure.<sup>(1)</sup> In the

House of Representatives, however, the general parliamentary law applicable is that body of parliamentary law generally based upon precedents and rules of past Houses.<sup>(2)</sup> Obsolete provisions of Jefferson's Manual, inconsistent with the prevailing practice of the House, do not apply.<sup>(3)</sup>

Past rules from a prior Congress may be relied upon to admit certain motions before the adoption of rules,<sup>(4)</sup> and those relating to organization procedures, though technically inapplicable, exert persuasive effect.<sup>(5)</sup> This is

1. See 59 Am Jur 2d *Parliamentary Law* §3. The general rules of parliamentary procedure applicable to any membership organization have been variously described as: those treating participants with fairness and good faith, *Re Election of Directors of Bushwick Sav. & Loan Assoc.*, 189 Misc. 316, 70 N.Y.S. 2d 478 (1947); those used by all American deliberative assemblies, *Theofel v Butler*, 134 Misc. 259, 236 N.Y.S. 81, affd. 227 App. Div. 626, 235 N.Y.S. 896 (1929).

**Collateral references:** George S. Blair, *American Legislatures; Structure and Process*, Harper and Row (N.Y., 1967). Lewis A. Froman, Jr., "Organization Theory and the Explanation of Important Characteristics of Congress," 62 AMERICAN POLITICAL SCIENCE REVIEW 518-562 (June, 1968). *Guide to the Congress of the United States*, Congressional

Quarterly, Inc. (Wash., D.C. 1971). Paul Riddick, *The United States Congress Organization and Procedure*, National Capitol Publishers (Manassas, Va. 1949).

2. See *House Rules and Manual* §60 (comment) (1973). See also 5 Hinds' Precedents §§6758-63; 8 Cannon's Precedents §§3383-86.
3. See 5 Hinds' Precedents §§6757, 6761-63. Rule XLII, *House Rules and Manual* §938 (1973) provides for the application of Jefferson's Manual to House procedure where not inconsistent with standing rules.
4. For example, the motion to recommit was admitted before the adoption of rules on Dec. 7, 1931, 71 CONG. REC. 12, 72d Cong. 1st Sess. (Speaker John N. Garner), because it was within the "spirit" of the rules of the preceding Congress (see §9.5, *infra*).
5. Rule II (election of officers and administration of oath to them), §635, and Rule III clause 1 (duties of Clerk

not to infer, however, that past rules are generally controlling.<sup>(6)</sup> A rule of a past Congress assuming to control a future House as to rules at organization is not binding,<sup>(7)</sup> and a statutory enactment incorporated into the rules of a preceding Congress and enacted under the rule-making power of the House and Senate has no effect in a new Congress until expressly adopted.<sup>(8)</sup>

## § 2. Types of Meeting; Sessions

Congress assembles in various ways, as determined by the status of Congress at its last meeting

at commencement of new Congress), §637, *House Rules and Manual* (1973), prescribe the procedure at organization which is generally followed, although the rules are not technically in force at that time.

6. See, *e.g.*, 5 Hinds' Precedents §§5590, 5604.
7. 5 Hinds' Precedents §§6765–66.
8. The requirements of the Legislative Reorganization Act of 1970, Pub. L. No. 91–510, 84 Stat. 1140, incorporate as an exercise of the rule-making power into the rules of the 91st Congress, were ruled not applicable to the proceedings of the 92d Congress before the adoption of rules. 117 CONG. REC. 132, 92d Cong. 1st Sess., Jan. 22, 1971 (Speaker Carl Albert, Okla.) (see § 12.9, *infra*).

and by the provisions of the twentieth amendment, requiring assembly at least once a year.<sup>(9)</sup> The two types of “assembly” contemplated by the twentieth amendment include the convening of the first session of a new Congress and the convening of the second or following session of an existing Congress.<sup>(10)</sup> A third category of assembly, the extra session, may arise when the Congress is convened pursuant to Presidential proclamation after the final adjournment of one session but before the constitutional day for the convening of the next session.<sup>(11)</sup> When the President ex-

9. Section 2. The twentieth amendment, ratified Feb. 6, 1933, superseded U.S. Const. art. I, § 4, clause 2.
10. See *House Rules and Manual* § 590 (1973). See § 3, *infra*, for determination of the meeting time of Congress.
11. For the President's authority to convene Congress, see U.S. Const. art. II, § 3. For characterization of meetings called by the President, and whether they constitute a new session, see § 3, *infra*. See also *Ashley v Keith Oil Corp.*, 7 F.R.D. 589 (D. Mass. 1947); compare Jefferson's Manual, *House Rules and Manual* § 588 (1973). For instances of extra sessions since 1936, see §§ 2.1–2.2, *infra*.

In the 93d Congress, the concurrent resolution adjourning *sine die* the 1st session (H. Con. Res. 412) provided that the leadership could reassemble Congress.